



VIA ELECTRONIC MAIL: natalie.andrews@state.ma.us

September 24, 2010

Natalie Andrews
The Department of Energy Resources
100 Cambridge Street - Suite 1020
Boston, MA 02114.

RE: Department of Energy Resources' final changes to the RPS Class I revised regulation, 225 CMR 14.00

Ms. Andrews:

NextEra Energy Resources, LLC ("NextEra") is pleased to offer these comments in support of The Department of Energy Resources' ("DOER") final changes to the RPS Class I revised regulation, 225 CMR 14.00, pertaining to the implementation of the Solar Carve-Out program. Properly implemented solar carve-out regulations will advance Governor Patrick's goal of establishing the Commonwealth as a leader in the promotion of renewable energy resources by installing 400 MW of solar energy generation within the Commonwealth by 2017, the establishment of renewable industry and the creation of green jobs, particularly in the area of solar energy. NextEra appreciates the opportunity to work with the DOER to ensure that the climate in Massachusetts is strong and competitive for investment in solar development. As set forth herein, NextEra maintains that the likelihood of success of Massachusetts' Solar Carve-Out Program from the perspectives of increasing the amount of solar energy consumed in the state while limiting the cost and risk exposure for Massachusetts consumers can be maximized through the promulgation of regulations that are stable and predictable for the Program participants.

NextEra Energy Resources, LLC (NextEra), a subsidiary of NextEra Energy, is one of the leading clean energy companies in the U.S. with over 18,000 megawatts of generation in operation in 27 states, as well as in Canada. NextEra is the largest generator of wind and solar power in North America, including the nation's largest solar facility, the 310 megawatt SEGS facility in California. An early supporter of the Regional Greenhouse Gas Initiative (RGGI) in Massachusetts and throughout the region, our parent company, NextEra Energy, has long been one of the electric power sector's strongest advocates of meaningful action to address the threat of climate change. NextEra has extensive experience in developing and constructing power plants and associated infrastructure in fulfillment of state goals and procurement initiatives similar to the Solar Carve-Out Program.

I. COMMUNICATIONS:

NextEra requests that all further correspondence, communications and other documents relating to this matter be served upon the following:

Christopher P. Sherman
Director of Regulatory and Legislative Affairs
NextEra Energy Resources
3 Mill Street
Arlington, MA 02476
(781) 643-0607

II. BACKGROUND:

The Solar Carve-Out Program provision was included as part of the Green Communities Act.¹ The RPS Class I standard requires all retail electricity suppliers selling electricity to end-use customers in the Commonwealth to obtain a specific minimum percentage of their electricity supply from renewable energy generation sources, and the Solar Carve-Out Program will require a certain percentage from eligible solar renewable generation sources. The Governor recently signed into law the Economic Development Act² which makes an additional change to the Solar Carve-Out Program, increasing the cap for eligibility from two to six megawatts. The DOER filed regulations on January 8, 2010 as an emergency regulation, and subsequently extended the emergency regulations on July 8, 2010. The proposed regulations located at 225 CMR 14.00 are a revision of an existing regulation to implement the Solar Carve-Out Program as required G.L.c. 25A §11F (g).

III. COMMENTS OF NEXTERA:

NextEra supports properly implemented measures to construct a state-wide Solar Carve-Out Program that is developed in a way that advances innovation and competition among market participants. If properly implemented the Solar Carve-Out Program will successfully provide the necessary support to the competitive energy market and promote the development and construction of solar energy generation resources to increase consumption of renewable energy in Massachusetts. To that end, NextEra appreciates the tremendous efforts of the DOER in this endeavor and offers the following comments to assist in the development of a constructive framework for the successful implementation of the Solar Carve-Out Program.

¹ Chapter 169 of the Acts of 2008

² Chapter 240 of the Acts of 2010- § 63

1. The Maximum Capacity of a Unit that is a Qualified Resource for the Solar Carve-Out Program Should be Reflected at 6 MW in the Regulations.

The draft regulations indicate that the maximum capacity for a qualified unit in the Solar Carve-Out Program is limited to 2MW; whereas, the Economic Development Act specifically increased the maximum capacity for eligibility from two to six megawatts. Accordingly, the proposed regulations should be altered as follows:

The maximum capacity of a Unit that is attached to the Unit's meter shall be ~~2~~ 6 MW...³

Increasing the maximum capacity as indicated will make the regulations compliant with the Economic Development Act and dramatically increase the Commonwealth's probability of meeting its solar energy goals.⁴

2. The Proposed Alternative Compliance Payment Provides Sufficient Protection to Consumers and the Auction Mechanism Provides Necessary Certainty for Solar Carve-Out Program Participants.

NextEra appreciates the earlier concerns of some stakeholders regarding the cost of the Solar Carve-Out Program; however, those commenters have not fully appreciated the economic opportunities afforded to the Commonwealth by implementing a robust Solar Carve-Out Program. The solar energy industry in the U.S creates thousands of green jobs for local communities. Over the next 25 years, the worldwide market for renewable/solar energy represents a multi-trillion dollar opportunity for U.S. firms. The use of solar and renewable energy is expected to double in the next few years and create more than 350,000 net new jobs.⁵ This type of economic development that focuses on the renewable energy sector is consistent with the goals of Governor Patrick to stimulate green jobs and strengthen our economy.⁶

Most solar developers seek to site facilities solely in regions of the country in which the solar resource is most intense, such as the U.S. Southwest, to the unfortunate

³ 225 CMR 14:05(4) (*alterations added*)

⁴ While it is beyond the scope of these comments, NextEra would like to express its appreciation for the continued dedication of both Governor Patrick and the Legislature, specifically the Joint Committee on Telecommunications, Utilities and Energy, to the promotion and development of renewable energy in the Commonwealth of Massachusetts by passing and signing into law the Economic Development Act to raise the cap for the SREC program from 2 to 6 MW. This is a significant improvement to the Solar Carve-Out Program and is certain to stimulate meaningful participation by solar industry leaders.

⁵ American Solar Energy Society

⁶ In 2008, Governor Patrick signed the Massachusetts Green Jobs Act to stimulate clean energy companies, create green jobs and provide job training programs to stimulate the development of new green jobs. According to the New England Clean Energy Council, full implementation of this legislation could create 21 new clean energy companies, attract up to half a billion dollars in venture capital, create more than 10,000 new jobs and raise \$50 million in new annual income tax revenue.

exclusion of the Northeast region. While the solar resource in the Northeast is less intense than that of other regions of the U.S., that lack of natural intensity can be offset by other incentives, such as a designated solar procurement requirement in a state's RPS law or rule, as well as the level of the solar compliance fee. Accordingly, the proposed Solar Carve-Out Program needs to be appropriately aggressive in order to influence the siting decisions of developers with limited investment dollars to choose Massachusetts as the location of solar installations, while simultaneously protecting electric consumers from endless costs.

Within the Solar Carve-Out Program the Alternative Compliance Payment of \$600MWh sets a reasonable cap on potential rate payer costs while the auction process appropriately guarantees program participants with a minimum of \$300 MWh and the value of long-term market certainty for S-RECs. NextEra maintains that the Solar Carve-Out Program strikes the proper balance of market protections for consumers and Program participants.

3. The DOER should Adequately Inform the Potential Market Participants of the Status of the Solar Carve-Out Program Phase-Out.

The overall goal of the Solar Carve-Out Program is to develop 400 MW of installed solar generation resources in Massachusetts by increasing the amount of SRECs required to be procured by 30% each year. When 400 MW of Solar Carve-Out Renewable Generation Units have been installed, the DOER will not accept any new Statement of Qualification Applications for the Solar Carve-Out Program.⁷ NextEra encourages the DOER to, at a minimum, include in the Annual Renewable Energy Resource Report⁸ a status of the program participants and the percentage of the 400 MW cap that has been fulfilled.

The time between the initial stages of a solar development project and the ability to reach Commercial Operation can vary widely depending upon the permitting and development constraints that are unique to a project. Beyond the information contained in the Annual Renewable Energy Resource Report, Program participants should be able to view a participant queue or timely non-proprietary Program status report to determine whether to invest the resources necessary to develop a qualifying project based upon their proposed development schedule. The ability to access such information will provide much greater certainty to market participants as opposed to developing projects without an awareness of when the Program could terminate.

4. Opt-In should be More Easily Predictable for Project Developers in Order to Minimize Risk to Solar Carve-Out Participants

⁷ See, 225 C.M.R. 14.05(4)(j) - as proposed

⁸ See, 225 C.M.R. 14.10(2) - as proposed

Each solar installation, as part of its RPS Solar Carve-Out qualification by the DOER, will be given a set term of years during which it will have the right (“Opt-in”) to deposit its SRECs into the Auction Account. The term begins at 40 quarters or 10 years for Compliance Year 2010; however, it may be adjusted annually. All projects installed in a given year will be given the same term established for that year. NextEra supports the regulatory consistency provided to existing projects by fixing the term for a project that is already installed and qualified so that the term does not change.

NextEra also supports the certainty that is granted to Program participants by fixing the Opt-in Term for Compliance Years 2010-2016 at not less than twenty quarters.⁹ However, this is inexplicably inconsistent with the treatment for Compliance Year 2017 and later whereby the DOER will at a later date determine whether to set a minimum number of quarters for the Opt-in Term for those Compliance Years. While the uncertainty is limited to new installations only, it will undeniably chill the intended development of resources by 2013. The more prudent course of action is to fix the Opt-in term for the fully term of the program so as to telegraph heightened regulatory certainty to potential participants and increase SREC supply.

5. The Reduction in the Alternative Payment of up to Ten-Percent Injects an Unacceptable Level of Risk and Uncertainty for Solar Carve-Out Participants.

There is tremendous value in the marketplace to the risk mitigation enabled by the Auction Account structure that assures S-REC prices of at least \$300/MWh for a fixed term established at the time of project; however, it is unlikely that the market floor price will be the motivating force behind the success of the Program. Rather, it is the certainty of the Alternative Compliance Payment that will ultimately motivate robust Program participation by both buyers and sellers of SRECS and create a heightened level of market liquidity, thereby sending strong signals to the investment community to invest in solar resources. However, NextEra cautions the DOER that the threat of a subjective reduction of up to 10% in any year of the Alternative Compliance Payment is substantial enough to chill participation in the Program.

As noted above, the development timeline of each project can vary widely depending upon the permitting and development constraints that are unique to that project, and longer lead time projects could see the market erode in a material way by such a dramatic reduction in the ACP over the development window. The threat of such a substantial reduction in market revenue that has no basis in market fundamentals is sufficient to undermine participation. Narrowed market participation will ultimately discourage solar development and unnecessarily maintain a higher price of SREC supply for Massachusetts consumers. NextEra recommends that the DOER fix the ACP for the period of the Solar Carve-Out Program or, at a minimum, establish triggers that provide some rationale for any subsequent ACP reductions.

⁹ See, 225 C.M.R. 14.06(3)(e) - as proposed

IV. CONCLUSION

NextEra appreciates the DOER's consideration of these comments and looks forward to participating in the Solar Carve-Out Program. We offer our continued support for the further development of these regulations and request to be kept informed of additional efforts in that regard.

Respectfully submitted,

/S/

Christopher P. Sherman
Director of Regulatory and Legislative
Affairs
NextEra Energy Resources